

EXHIBIT 10

[FR Doc. 03-22426 Filed 9-2-03; 8:45 am]
BILLING CODE 3911-01-C

DEPARTMENT OF TRANSPORTATION

**Federal Motor Carrier Safety
Administration**

[Docket No. FMCSA-2001-9800]

**Qualification of Drivers; Exemption
Applications; Diabetes**

AGENCY: Federal Motor Carrier Safety
Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: This notice announces
FMCSA's decision to issue exemptions
to certain insulin-using diabetic drivers

of commercial motor vehicles (CMVs)
from the diabetes mellitus prohibitions
contained in the Federal Motor Carrier
Safety Regulations (FMCSRs). The
FMCSA will grant exemptions only to
those applicants who meet the specific
conditions and comply with all the
requirements of the exemption. The
FMCSA will issue exemptions for not
more than a period of two years. Upon
expiration, those holding exemptions
may apply to FMCSA for a renewal
under procedures in effect at that time.
The FMCSA is leaving the docket open
so that interested persons can provide
comments on any changes to the
specific conditions needed to qualify for
the exemption program.

DATES: This notice is effective on
September 3, 2003. FMCSA will begin

accepting applications for exemptions
on September 22, 2003.

ADDRESSES: Qualified insulin-treated
diabetes mellitus drivers may now
request a diabetes exemption from the
regulations of 49 CFR 391.41(b)(3) by
sending an exemption request to:
Diabetes Exemption Program (MC-PSP),
Office of Bus and Truck Standards and
Operations, Federal Motor Carrier Safety
Administration, 400 Seventh Street,
SW., Washington, DC 20590-0001.

FOR FURTHER INFORMATION CONTACT: Ms.
Sandra Zywockarte, Office of Bus and
Truck Standards and Operations, (202)
366-4001, FMCSA, 400 Seventh Street,
SW., Washington, DC 20590. Office
hours are from 7:45 a.m. to 4:15 p.m.,
e.t., Monday through Friday, except
Federal holidays.

52442

Federal Register / Vol. 68, No. 170 / Wednesday, September 3, 2003 / Notices

SUPPLEMENTARY INFORMATION:

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time, or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's (DOT) complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477), or you may visit <http://dms.dot.gov>.

Background

The agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of accident involvement than the general population. The diabetes requirement provides that: A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control (49 CFR 391.41(b)(3)).

Since 1970, the agency has considered the diabetes requirement and undertaken studies to determine if its diabetes standard for commercial drivers in interstate commerce should be amended. It is FMCSA's view that its physical qualification standards should be based on sound medical, scientific and technological grounds, and that individual determinations should be made to the maximum extent possible consistent with FMCSA's responsibility to ensure safety on the nation's highways. The FMCSA published a notice of intent to issue exemptions to insulin-using diabetic drivers in the Federal Register on July 31, 2001 (66 FR 39548). This notice of intent discussed the regulatory history and research activity addressing the issue of diabetes and CMV operation.

Feasibility Study To Qualify Insulin-Treated Diabetics to Operate CMVs

Section 4018 of the Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107) directed the Secretary of Transportation (the Secretary) to determine if it is feasible to develop a safe and practicable program for allowing

individuals with insulin-treated diabetes mellitus (ITDM) to operate CMVs in interstate commerce. In making the determination, the Secretary was directed to evaluate research and other relevant information on the effects of ITDM on driving performance. TEA-21 stated that, to accomplish this, the Secretary shall consult the states with regard to their programs for CMV operation by ITDM drivers, evaluate the DOT policies in other modes of transportation, analyze pertinent risk data, consult with interested groups knowledgeable about diabetes and related issues, and assess the possible legal consequences of permitting ITDM individuals to operate CMVs in interstate commerce. TEA-21 also directed the Secretary to report the findings to Congress and, if a program is feasible, describe the elements of a protocol to permit individuals with ITDM to operate CMVs. The FMCSA submitted the report to Congress on August 23, 2000. It is entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin Treated Diabetes Mellitus to Operate Commercial Motor Vehicles in Interstate Commerce as Directed by the Transportation Equity Act for the 21st Century," July 2000 (TEA-21 Report to Congress). It concludes that a safe and practicable protocol to allow some ITDM individuals to operate CMVs is feasible. For a detailed discussion of the report findings and conclusions, see July 31, 2001 (66 FR 39548). A copy of the report is on FMCSA's Web site at www.fmcsa.dot.gov/rulesregs/medreports.htm.

Authority—Exemptions

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a period up to two years if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the two-year period, or after the current exemption expires.

FMCSA must publish a notice in the Federal Register for each exemption requested, explaining that the request has been filed, and providing the public an opportunity to inspect the safety analysis and any other relevant information known to the agency, and comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the Federal Register identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective

period, and all terms and conditions of the exemption. The terms and conditions established by FMCSA must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

In addition, the agency is required to monitor the implementation of each exemption to ensure compliance with its terms and conditions. If FMCSA denies a request for an exemption, the agency must periodically publish a notice in the Federal Register identifying the person(s) whom the agency denied the exemption to and the reasons for the denial.

Generally, the duration of exemptions is limited to two years from the date of approval, but may be renewed. FMCSA is required to immediately revoke an exemption if:

- (1) The person fails to comply with the terms and conditions of the exemption;
- (2) The exemption has resulted in a lower level of safety than was maintained before the exemption was granted; or
- (3) Continuation of the exemption would not be consistent with the goals and objectives of the regulations issued under the authority of 49 U.S.C. 31315 and 31136(e).

Process for Applying for an Exemption

The procedures for applying for an exemption may be found at 49 CFR 381.300 through 381.330. The person applying for an exemption is required to send a written request to the FMCSA Administrator. The written request must include basic information such as the identity of the person who would be covered by the exemption, the name of the motor carrier or other entity that would be responsible for the use or operation of CMVs during the exemption period, and the principal place of business of the motor carrier or other entity. Under section 381.310, the application must include a written statement that:

- (1) Describes the event or CMV operation for which the exemption would be used;
- (2) Identifies the regulation from which the applicant is requesting relief;
- (3) Estimates the total number of drivers and CMVs that would be operating under the terms and conditions of the exemption; and
- (4) Explains how the recipient of the exemption would ensure that they achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation.

FMCSA Procedures for the Review of Exemption Applications

Section 381.315 requires FMCSA to review an application for an exemption and prepare, for the Administrator's signature, a Federal Register notice requesting public comment. After a review of the comments received, FMCSA staff will make a recommendation to the Administrator. FMCSA will publish a notice of the Administrator's final decision in the Federal Register. FMCSA will issue a final decision within 180 days of the date it receives an individual's completed application. However, if the applicant should omit important details or other information necessary for the agency to conduct a comprehensive evaluation, FMCSA will issue a final decision within 180 days of the date that it receives sufficient information (49 CFR 381.315 and 381.320). FMCSA recognizes that this potential six-month waiting period may seem burdensome. However, the agency must carefully evaluate each and every application for regulatory relief from the diabetes standard, to assess the potential safety performance of each applicant. In addition, the agency must prepare and submit the candidate's application for public notice and comment in the Federal Register and then evaluate comments received before making a final decision. FMCSA's overriding concern is to ensure the safety of interstate CMV operations. The agency will notify all applicants in writing once it makes a final decision.

Application Information

In considering exemptions, the FMCSA must ensure that the issuance of diabetes exemptions will not be contrary to the public interest and that the exemption achieves an acceptable level of safety. The FMCSA will only grant exemptions, therefore, to ITDM individuals who meet certain conditions. These conditions are set forth below and the FMCSA based the conditions on the research literature, relevant DOT and State exemption programs, and substantial medical input from a panel of endocrinologists. FMCSA will require applicants for an exemption from the ITDM prohibition to submit their applications in a letter (there will be no application form), include all supporting documentation, and use the following format:

Vital Statistics

Name (First Name, Middle Initial, Last Name).
Address (House Number and Street Name, City, State, and ZIP Code).

Telephone Number (Area Code and Number).
Sex (Male or Female).
Date of Birth (Month, Day, Year).
Age.
Social Security Number.
State Driver's License Number (List all licenses held to operate a commercial motor vehicle during the 3-year period immediately preceding the date of application).
Driver's License Expiration Date.
Driver's License Classification Code (If not a commercial driver's license (CDL) classification code, specify what vehicles may be operated under such code).
Driver's License Date of Issuance (Month, Day, Year).

Experience

Number of years driving straight trucks.
Approximate number of miles per year driving straight trucks.
Number of years driving tractor-trailer combinations.
Approximate number of miles per year driving tractor-trailer combinations.
Number of years driving buses.
Approximate number of miles per year driving buses.

Present Employment

Employer's Name (If Applicable).
Employer's Address.
Employer's Telephone Number.
Type of Vehicle Operated and GVWR (Straight Truck, Tractor-Trailer Combination, Bus).
Commodities Transported (e.g., General Freight, Liquids in Bulk (in cargo tanks), Steel, Dry-Bulk, Large Heavy Machinery, Refrigerated Products).
Estimated number of miles driven per week.
Estimated number of daylight driving hours per week.
Estimated number of nighttime driving hours per week.
States in which you will drive if issued an exemption.

In addition, the applications must include supporting documentation showing that the applicant:

- (1) Possesses a valid intrastate CDL or a license (non-CDL) to operate a CMV;
- (2) Has operated a CMV, with a diabetic condition controlled by the use of insulin, for the three-year period immediately preceding application;
- (3) Has a driving record for that three-year period that:

Contains no suspensions or revocations of the applicant's driver's license for the operation of any motor vehicle (including their personal vehicle),

Contains no involvement in an accident for which the applicant

received a citation for a moving traffic violation while operating a CMV,
Contains no involvement in an accident for which the applicant contributed to the cause of the accident, and

Contains no convictions for a disqualifying offense or more than one serious traffic violation, as defined in 49 CFR 383.5, while operating a CMV;

(4) Has no other disqualifying conditions including diabetes-related complications;

(5) Has had no recurrent (two or more) hypoglycemic reactions resulting in a loss of consciousness or seizure within the past five years. A period of one year of demonstrated stability is required following the first episode of hypoglycemia;

(6) Has had no recurrent hypoglycemic reactions requiring the assistance of another person within the past five years. A period of one year of demonstrated stability is required following the first episode of hypoglycemia;

(7) Has had no recurrent hypoglycemic reactions resulting in impaired cognitive function that occurred without warning symptoms within the past five years. A period of one year of demonstrated stability is required following the first episode of hypoglycemia,

(8) Has been examined by a board-certified or board-eligible endocrinologist (who is knowledgeable about diabetes) who has conducted a complete medical examination. The complete medical examination must consist of a comprehensive evaluation of the applicant's medical history and current status with a report including the following information:

- (A) The date insulin use began,
- (B) Diabetes diagnosis and disease history,
- (C) Hospitalization records,
- (D) Consultation notes for diagnostic examinations,
- (E) Special studies pertaining to the diabetes,

(F) Follow-up reports,
(G) Reports of any hypoglycemic insulin reactions within the last five years,

(H) Two measures of glycosylated hemoglobin, the first 90 days before the last and current measure,

(I) Insulin dosages and types, diet utilized for control and any significant factors such as smoking, alcohol use, and other medications or drugs taken, and

(J) Examinations to detect any peripheral neuropathy or circulatory insufficiency of the extremities;